

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PABLO VELASQUEZ JR.,

Defendant.

Case No. 1:19-mj-00197-SAB

ORDER SETTING BRIEFING SCHEDULE
AND DENYING STAY OF TERM OF
INCARCERATION PENDING RESOLUTION
OF MOTION WITHOUT PREJUDICE

(ECF No. 20)

On June 25, 2020, Defendant Pablo Velasquez, Jr. admitted to count two of the complaint, Driving Without a Valid License in violation of 36 C.F.R. § 4.2 and Cal. Veh. Code § 12500(a); and was sentenced, as relevant here, to fifteen days of custody, and he was ordered to self-surrender on October 2, 2020. (ECF No. 15.) On September 28, 2020, a stipulation was filed to modify Defendant's self-surrender date from October 2, 2020 to January 8, 2021. (ECF No. 18.) The stipulation was granted in part, and Defendant was ordered to self-surrender on November 6, 2020, at 10:00 am with consecutive weekends to be served for a total of 15 days. (AR 19.) On November 3, 2020, a stipulation was filed seeking a briefing schedule for Defendant to file a motion pursuant to 18 U.S.C. § 3582(c), in part, based on his medical condition. Defendant also seeks a stay of his term of imprisonment pending a ruling on the motion.

The Court shall grant the request to set a briefing schedule, but the request to stay imposition of the sentence shall be denied without prejudice. Other than a vague assertion

1 regarding medical conditions and that he is at great risk, Defendant has not presented any
2 evidence in the current motion that he is at an increased risk of contracting COVID-19 and, at
3 this time, the situation in Fresno County has significantly improved. The county has moved to a
4 lower tier with restaurants allowed to resume indoor dining and gyms and recreational facilities
5 reopening and schools beginning to have students return to campus. As this Court previously
6 discussed in the October 1, 2020 order, it is highly probable that the situation will worsen as we
7 move into the flu season and with the approach of the holidays as families beginning to gather.

8 Further, the order at issue here was filed on October 1, 2020, and no motion appealing the
9 decision has been filed. Defendant was aware of the impending self-surrender date for over a
10 month with ample opportunity to address the issue, to develop the record on the issue raised, and
11 present a motion to revise the terms of probation that could be timely ruled on prior to the self-
12 surrender date. Yet, Defendant waited until three days prior to the deadline to self-surrender and
13 then set the motion filing deadline past the self-surrender date and the hearing on the motion past
14 the time initially requested to self-surrender which appears to be an attempt to avoid the order
15 that he self-surrender prior to January 2021.

16 For these reasons, the Court denies the request to stay the imposition of Defendant's term
17 of imprisonment without prejudice. Also, if counsel wants to revise the schedule, the court will
18 entertain that schedule.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. Defendant's request to stay the imposition of his imprisonment pending his filing
21 a motion pursuant to 18 U.S.C. § 3582(c) is DENIED WITHOUT PREJUDICE;
- 22 2. The request for a briefing schedule for a motion pursuant to 18 U.S.C. § 3582(c)
23 is GRANTED;
 - 24 a. Defendant shall file his opening brief on or before **November 20, 2020**;
 - 25 b. The Government's responsive pleading shall be filed on or before
26 **December 4, 2020**;
 - 27 c. Defendant's reply, if any, shall be filed on or before **December 18, 2020**;
 - 28 and

d. A hearing on the motion is set for January 21, 2021, at 10:00 a.m. in Courtroom 9 before Magistrate Judge Stanley A. Boone.

IT IS SO ORDERED.

Dated: November 4, 2020



UNITED STATES MAGISTRATE JUDGE